

**Notice of Allowability**

Application No.

10/622,983

Applicant(s)

ENGLESON ET AL.

Examiner

Ronald D Hartman Jr.

Art Unit

2121

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Terminal Disclaimer and letter filed on 11/29/04 and 12/17/04.
2. ☒ The allowed claim(s) is/are 13-18 (renumbered by the examiner as claims 1-6).
3. ☒ The drawings filed on 18 July 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 13-18 are presented for further examination.
2. This action is in response to the Terminal Disclaimer filed on 11/29/2004 and the subsequent letter filed on 12/17/2004.

#### ***Priority***

3. Priority is once again acknowledged to 09/114,581, wherein the present application is a Continuation of 09/114,581, wherein 09/114,581 was originally filed on 07/13/1998 and which has since matured into U.S. Patent No. 6,671,563.

Furthermore, it is also noted that 09/114,581, now U.S. Patent No. 6,671,563 is also a Continuation in Part (CIP) of 08/440,625 which matured into U.S. Patent No. 5,781,442. Therefore, the effective filing date of the instant application, with regards to potential prior art rejections, appears to be **05/15/1995**.

Both of the previously mentioned applications were reviewed for possible Double Patenting, and the rejections that followed, See the office action mailed on 08/24/2004, have been effectively overcome by the responses dated 11/29/2004 and 12/17/2004.

#### ***Information Disclosure Statement***

4. It is noted that in the office action mailed on 08/24/2004, several foreign references, located under the Foreign Patent Documents section, were not considered, as they were not readily available to the examiner and the time of the office action. The examiner has since used a software tool by the name of FPAS3 (foreign patent access system) to retrieve and consider these documents, and therefore these references have been listed on the enclosed PTO-892 form.

#### ***Allowable Subject Matter***

5. Claims 13-18 are allowed over the prior art of record.

As per claims 13-18, specifically independent claims 13 and 17-18, the prior art of record fails to teach or adequately suggest a system for programming a clinical

device to deliver medication to a patient comprising a means for passively detecting the identity of a patient independent of any action by the patient or caregiver, wherein this passive identification means supplies the identification information to a first processor which stores device operation data, and wherein the first processor is configured to send the operation data to a second processor which then allows for the operation data to be downloaded into the clinical device so as to allow the clinical device to deliver medication to a specific patient based on the identity of that patient in response to an acceptable comparison of the identity of the patient and information stored by the first processor, in combination with the other claimed features and or limitations as claimed.

Once again it is noted that the closest available prior art appears to be U.S. Patent No. 6,039,251 issued to Holowko et al. in which a system similar to that claimed by the instant application is disclosed. However, not only does the system of Holowko et al. fail to antedate the effective filing date of the instant application, that being 05/15/1995, the system of Holowko et al. also does not specifically disclose the utilization of a passive identification system since Holowko et al. utilizes a smart card so as to inform the system of the identity of the patient. The system of Holowko et al. is therefore not passive in nature and therefore does not contemplate the claimed invention of the instant application.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald D Hartman Jr. whose telephone number is (571) 272 - 3684. The examiner can normally be reached on Mon. - Fri., 11:30 am - 8:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight can be reached at (571) 272 - 3687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ronald D Hartman Jr.

Patent Examiner

Art Unit 2121

X ROH

  
**Anthony Knight**  
**Supervisory Patent Examiner**  
**Group 3600**